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Dated: August 8, 2002

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**HONORING TICKETS OF INSOLVENT AIRLINES PURSUANT TO THE
REQUIREMENTS OF SECTION 145 OF THE AVIATION AND
TRANSPORTATION SECURITY ACT**

NOTICE

The purpose of this notice is to clarify the obligation of airlines under section 145 of the Aviation and Transportation Security Act ("Act") to provide transportation to passengers of airlines that have ceased operations due to insolvency or bankruptcy. (P.L. 107-71, 115 Stat. 645 (November 19, 2001).) This notice is needed because of numerous consumer complaints received by the Department regarding the treatment of passengers holding Vanguard Airline tickets by other airlines in the wake of Vanguard's July 30, 2002, cessation of operations.

In the wake of the September 11, 2001, terrorist attacks on the United States, Congress passed the Aviation and Transportation Security Act, which was signed into law on November 19, 2001. At least in part due to concerns that airlines might become insolvent, with resulting harm to consumers holding tickets on such airlines, Congress included in the law a provision to protect such consumers. The provision, section 145, requires airlines that operate on the same route as an insolvent carrier that has ceased operations to transport, "to the extent practicable," the ticketed passengers of the insolvent carrier. Specifically, section 145, which applies to interruptions in air service that occur within 18 months of the enactment of the Act, states in pertinent part:

(a) . . . Each air carrier that provides scheduled air transportation on a route shall provide, to the extent practicable, air transportation to passengers ticketed for air transportation on that route by any other air carrier that suspends, interrupts, or discontinues air passenger service on the route by reason of insolvency or bankruptcy of the other air carrier.

(b) . . . An air carrier is not required to provide air transportation under subsection (a) to a passenger unless that passenger makes alternative arrangements with the air carrier for such transportation within 60 days after the date on which that passenger's air transportation was suspended, interrupted, or discontinued (without regard to the originally scheduled travel date on the ticket).

After the recent cessation of operations of Vanguard Airlines, there has been considerable confusion, on the part of airlines and the traveling public, over airlines' responsibilities under section 145, particularly with regard to the meaning of the phrase "to the extent practicable" as it relates to the carriers' duties to transport persons holding Vanguard tickets. Carriers have implemented varying policies regarding the treatment afforded to persons holding Vanguard tickets. Some carriers are providing those passengers transportation at no additional cost, either on a confirmed or stand-by basis. Others permit passengers to fly stand-by but assess up to a \$100 "administrative fee" each way, along with offering to drop advance purchase requirements for restricted positive-space fares, and still others offer restricted positive-space fares and do not permit stand-by travel at all. In some of the instances, carriers have announced that their accommodations for Vanguard passengers will be available for only a short period of time.

It is the Department's position that section 145 requires, at a minimum, that passengers holding valid confirmed tickets, whether paper or electronic, of the insolvent or bankrupt carrier must be transported by other carriers who operate on the route for which the passenger is ticketed on a space-available basis on the date of travel shown on the ticket or other documentation demonstrating e-ticketing, without significant additional charges. We recognize that there is a cost to airlines of transporting such passengers and we do not believe that in enacting section 145 Congress intended to prohibit carriers from recovering from accommodated passengers minimal amounts associated with the actual cost of providing such transportation, such as direct cost of rewriting a passenger's ticket, onboard meal costs, and additional fuel costs for transporting an additional passenger. However, in no case do we foresee those costs exceeding \$25 each way.

We also believe that the 60-day provision in the statute is clear. Consumers holding Vanguard tickets have until 60 days after the carrier suspended operations, or until September 28, 2002, to attempt to make alternative arrangements with another carrier.

It should be noted that passengers who purchased their Vanguard tickets using a credit card are entitled under the Fair Credit Billing Act to a credit refund from their credit card issuer, under specific circumstances, to the extent they do not receive the services for which they paid. If a passenger elects to accept alternate transportation under section 145, this choice is likely to affect his or her right to a refund under the Fair Credit Billing Act. The public may obtain information on obtaining refunds for Vanguard tickets on the Department's website at <http://www.dot.gov/airconsumer/vanguard.htm>

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 400 7th St., S W., Washington, D C 20590.

By:

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Assistant Secretary for
Aviation and International Affairs

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